

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PATRICIA BUTLER and WESLEY
BUTLER,

Plaintiffs,

v.

HARVEST MANAGEMENT SUB, LLC
d/b/a HOLIDAY RETIREMENT,

Defendant.

CASE NO. C17-0685 RAJ

ORDER

I. INTRODUCTION

This matter comes before the Court on Defendant Harvest Management Sub LLC's Motion to Dismiss. Dkt. # 11. Plaintiffs Patricia Butler and Wesley Butler oppose the Motion. Dkt. # 20. For the reasons set forth below, the Court **GRANTS** Defendant's Motion.

II. BACKGROUND

The following is taken from Plaintiff's Complaint, which is assumed to be true for the purposes of this motion to dismiss. *Sanders v. Brown*, 504 F.3d 903, 910 (9th Cir. 2007).

1 As a preliminary matter, Defendant requests that the Court take judicial notice of a
2 decision in a related FLSA case involving Defendant, *Cwik v. Harvest Mgmt. Sub LLC*,
3 Case No. 2:12-cv-08309-DMG-JC (C.D. Cal., filed Sept. 26, 2012), and the relevant
4 filings in that case, attached as exhibits to Defendant's Motion. Dkt. # 11 Ex. A-G. As
5 the requested documents are "matters of public record" and their authenticity is not
6 contested, Defendant's request is granted. *See Lee v. City of Los Angeles*, 250 F.3d 668,
7 689 (9th Cir. 2001) ("Under Fed. R. Evid. 201, a court may take judicial notice of
8 'matters of public record.'"); Fed. R. Evid. 201.

9 Plaintiffs bring this proposed collective action against Defendant for alleged
10 violations of the Fair Labor Standards Act ("FLSA"), 27 U.S.C. §§ 201, *et seq.* Plaintiffs
11 allege that Defendant intentionally misclassified thousands of Co-Managers as exempt
12 employees to evade federal wage and hour laws. Dkt. # 1 ¶ 3. Plaintiffs worked as
13 Co-Managers from approximately July 2012 to November 2014. Dkt. # 1 ¶ 11. In
14 November of 2015, Plaintiffs filed a petition for bankruptcy which was discharged in
15 February of 2016. Dkt. # 11. Plaintiffs did not disclose a potential FLSA claim in their
16 bankruptcy proceedings. *Id.* Plaintiffs filed this action on May 2, 2017. Dkt. # 1.

17 **III. LEGAL STANDARD**

18 **A. FRCP 12(b)(6)**

19 Fed. R. Civ. P. 12(b)(6) permits a court to dismiss a complaint for failure to state a
20 claim. The rule requires the court to assume the truth of the complaint's factual
21 allegations and credit all reasonable inferences arising from those allegations. *Sanders v.*
22 *Brown*, 504 F.3d 903, 910 (9th Cir. 2007). A court "need not accept as true conclusory
23 allegations that are contradicted by documents referred to in the complaint." *Manzarek v.*
24 *St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). The plaintiff must
25 point to factual allegations that "state a claim to relief that is plausible on its face." *Bell*
26 *Atl. Corp. v. Twombly*, 550 U.S. 544, 568 (2007). If the plaintiff succeeds, the complaint
27 avoids dismissal if there is "any set of facts consistent with the allegations in the

1 complaint” that would entitle the plaintiff to relief. *Id.* at 563; *Ashcroft v. Iqbal*, 556 U.S.
2 662, 679 (2009).

3 A court typically cannot consider evidence beyond the four corners of the
4 complaint, although it may rely on a document to which the complaint refers if the
5 document is central to the party’s claims and its authenticity is not in question. *Marder v.*
6 *Lopez*, 450 F.3d 445, 448 (9th Cir. 2006). A court may also consider evidence subject to
7 judicial notice. *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003).

8 **IV. DISCUSSION**

9 Defendant argues that Plaintiffs are barred from pursuing their FLSA claims based
10 on the doctrine of judicial estoppel. “Judicial estoppel is an equitable doctrine invoked
11 by a court at its discretion.” *Ah Quin v. Cty. of Kauai Dep’t of Transp.*, 733 F.3d 267,
12 270 (9th Cir. 2013) (quoting *New Hampshire v. Maine*, 532 U.S. 742, 750, 121 S.Ct.
13 1808, 149 L.Ed.2d 968 (2001)). Its purpose is to “protect the integrity of the judicial
14 process” by precluding a party from gaining an advantage by asserting one position and
15 then later taking a clearly inconsistent position. *Ah Quin*, 733 F.3d at 270; *see also*
16 *Hamilton v. State Farm Fire & Cas. Co.*, 270 F.3d 778, 782 (9th Cir. 2001).

17 While the doctrine of judicial estoppel is not reducible to any “general formulation
18 of principle,” a court may consider the following factors to inform its decision whether to
19 apply the doctrine in a particular case: (1) a party’s later position is “clearly inconsistent”
20 with its earlier position; (2) the party persuaded a court to accept that party’s earlier
21 position, so that judicial acceptance of an inconsistent position in a later proceeding
22 would create the perception that the first or the second court was misled; (3) whether the
23 party seeking to assert an inconsistent position would derive an unfair advantage or
24 impose an unfair detriment on the opposing party if not estopped. *Ah Quin*, 733 F.3d at
25 270 (citing *New Hampshire*, 532 U.S. at 750-751). These factors are not “inflexible
26 prerequisites or an exhaustive formula for determining the applicability of judicial
27 estoppel.” *Id.*

1 In the bankruptcy context, if a debtor omits a pending or “soon-to-be-filed”
2 lawsuit from the bankruptcy schedules and obtains a discharge, judicial estoppel bars the
3 action. *Id.* at 271. However, “it may be appropriate to resist application of judicial
4 estoppel where the party’s prior inconsistent position was based on inadvertence or
5 mistake.” *New Hampshire*, 532 U.S. at 753. Because judicial estoppel is a discretionary
6 doctrine, the application of judicial estoppel is a case-by-case determination. *Ah Quin*,
7 733 F.3d at 272.

8 Plaintiffs argue that the omission of this claim from their bankruptcy schedules
9 was inadvertent because they did not learn that they had a potential claim until after their
10 bankruptcy was discharged and because they have filed a motion to reopen their
11 bankruptcy proceedings and amend their petition to disclose their claims. Dkt. # 20.
12 Where the plaintiff reopens bankruptcy proceedings and has corrected the alleged filing
13 error, judicial estoppel requires an inquiry into the plaintiff’s subjective intent when
14 filling out and signing the bankruptcy schedules. This inquiry takes into account, but is
15 not limited to, whether the plaintiff knew of the claims and had a motive to conceal them.
16 *Ah Quin*, 733 F.3d at 276-77.

17 In 2012, a proposed collective action was filed under the FLSA in the U.S. District
18 Court for the Central District of California, *Cwik v. Harvest Mgmt. Sub LLC*, Case No.
19 2:12-cv-08309-DMG-JC (C.D. Cal., filed Sept. 26, 2012). Dkt. # 11 Ex. A-G.
20 Defendant’s classification of the Co-Manager position was among the disputed claims in
21 that case. The *Cwik* action eventually settled. *Id.* In or around July of 2013, while
22 Plaintiffs were still working for Defendant, they received notice of the settlement in
23 *Cwik*. Dkt. ## 22, 23. Plaintiffs submitted a claim, received payment, and cashed their
24 checks. *Id.* Plaintiffs continued to work for Defendant after submitting their claim.
25 However, Plaintiffs contend that they did not learn that they had a potential claim for the
26 time they worked after the settlement until they received an email message about
27 potential claims for unpaid overtime in September of 2016. Dkt. # 20. Plaintiffs admit

1 that the settlement notice they received described the *Cwik* lawsuit, including the fact that
2 the lawsuit involved Defendant's alleged failure to pay Co-Managers overtime
3 compensation. Dkt. # 1 ¶ 10; Dkt. # 22 ¶ 7; Dkt. # 23 ¶ 7. The notice also indicated the
4 relevant time period for the settled claims, specifically that the settlement covered claims
5 for time worked through June 19, 2013. Dkt. # 24; Dkt. # 11-1. Plaintiffs also allege that
6 the Co-Manager position and its related duties did not change following the *Cwik*
7 settlement. Dkt. # 1 ¶ 10 n.2.

8 Plaintiffs submit that their action to re-open their bankruptcy proceedings to
9 amend their petition is evidence that they did not deliberately conceal anything from their
10 debtors. However, their bankruptcy petition was discharged in February of 2016.
11 Assuming that Plaintiffs did not, as they allege, know that they had a potential claim until
12 September of 2016, they still did not file a motion to re-open their bankruptcy
13 proceedings until June 30, 2017, or two weeks after Defendant filed this Motion to
14 Dismiss. Dkt. # 22, 23. The Court finds this timing disingenuous and evidence that
15 Plaintiff's omission was not actually inadvertent. *See Dzakula v. McHugh*, 746 F.3d 399,
16 402 (9th Cir. 2014) (finding that the timing of the plaintiff's amendment of her
17 bankruptcy schedules indicative of whether her original omission was inadvertent or
18 mistaken). Plaintiffs also submit declarations in support of their Response, stating that
19 they did not know that they had additional claims for unpaid overtime that they might
20 seek payment for in the future, and that it did not occur to them that they might have a
21 claim for unpaid wages when they filed for bankruptcy in 2015¹. Dkt. # 22, 23.

22 However, these self-serving and conclusory statements are insufficient to support
23 Plaintiffs' arguments. Taking into account the above, as well as the fact that "full
24 disclosure in bankruptcy is essential to the functioning of the bankruptcy system," the
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27 ¹ Plaintiffs request that the Court convert Defendant's Motion to Dismiss into a motion
for summary judgment. The Court declines to do so.

1 Court finds that judicial estoppel applies to bar Plaintiffs' claims. *Ah Quin*, 733 F.3d at
2 273.

3 **V. CONCLUSION**

4 For the foregoing reasons, the Court **GRANTS** Defendant's Motion to Dismiss.
5 Dkt. # 11. As this Order operates to dismiss all of Plaintiffs' claims, Plaintiffs' Motion
6 for Equitable Tolling of Statute of Limitations (Dkt. # 28) and Defendant's Motion to
7 Strike Opt-In Plaintiffs' Consent Forms (Dkt. # 30) are **DENIED as moot**.

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9 Dated this 15th day of February, 2018.

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13 The Honorable Richard A. Jones
14 United States District Judge
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